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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission
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WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

IN THE MATTER OF QWEST CORPORATION'S APPLICATION FOR APPROVAL OF LOCAL SERVICE FREEZE TARIFF.

DOCKET NO. T-01051B-02-0073

DECISION NO. 65349

OPINION AND ORDER

DATE OF HEARING:	June 17, 2002
PLACE OF HEARING:	Tucson, Arizona
ADMINISTRATIVE LAW JUDGE:	Jane L. Rodda
APPEARANCES:	Mr. Timothy Berg and Ms. Theresa Dwyer, Fennemore Craig, PC, on behalf of Qwest Corporation;
	Mr. Richard Wolters, Senior Attorney, AT&T Communications of the Mountain States, Inc. and TCG Phoenix;
	Ms. Teresa Tan, Worldcom, Inc.;
	Mr. Michael W. Patten, Roshka Heyman & DeWulf, PLC, on behalf of Cox Arizona Telcom, Inc.
	Mr. Brian Thomas, Time Warner Telecom, Inc.;
	Ms. Maureen A. Scott and Mr. Gary Horton, Staff Attorneys, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On January 28, 2002, Qwest Corporation ("Qwest") filed tariff revisions to give its customers the option of instituting a freeze of their local exchange provider.

On January 31, 2002, Cox Arizona Telcom, LLC ("Cox") filed a Motion for Suspension and for Hearing. Cox requested that the Commission conduct an evidentiary hearing to fully examine the propriety of the local service freeze and to determine if the tariff should be approved.

On February 4, 2002, WorldCom, Inc., on behalf of its regulated subsidiaries, ("WorldCom") and Time Warner Telecom of Arizona, LLC ("TWTA") filed separate Joinders in Cox's Motion.

On February 26, 2002, the Arizona Corporation Commission ("Commission") accepted the Utility Division's Staff's ("Staff") recommendation to suspend this tariff until May 27, 2002. The Commissioners directed the matter to the Hearing Division.

The Commission granted intervention to Cox, WorldCom and TWTA on February 20, 2002 and to TCG Phoenix on March 11, 2002.

A Procedural Conference convened on March 11, 2002 to discuss procedural issues. A Procedural Order dated March 25, 2002, set the matter for hearing on June 17, 2002 and established a schedule for filing written testimony.

On May 16, 2002, the Commission issued Decision No. 64831, which suspended the matter until November 23, 2003.

A hearing convened on June 17, 2002, at the Commission's offices in Tucson, Arizona. Scott A. McIntyre testified for Qwest; Dawn Russell testified for AT&T of the Mountain States, Inc. and TCG Phoenix (collectively "AT&T"); Mindy J. Chapman testified for Worldcom; Douglas Garrett testified for Cox; and Wilfred M. Shand testified for Staff.

The Proposed Local Service Freeze Tariff

On January 28, 2002, Qwest filed its Local Service Freeze ("LSF") tariff. The LSF tariff states, in its entirety:

> The Company permits customers to freeze their local service provider. This will be done for any requesting local exchange customer at no charge. Once the local service provider has been frozen, it may not be changed without the customer directly contacting the Company, consistent with all applicable laws and regulations. At the time a customer contacts the Company to establish a freeze, a representative will advise him/her on how to facilitate a change of provider on a frozen account.

The LSF will allow customers the choice of placing a "hold" or "freeze" on their local service account so that a change in local service providers cannot be made without the customer's authorization. The same protection is currently available to long distance customers.

Qwest elaborates that a customer may lift the freeze either through written means, such as completing the freeze removal form available on Qwest's website, or orally, by virtue of a direct call to Qwest, or by participating in a three-way call with a CLEC. During the contact, the Qwest representative requests identifying information and confirms the customer's intent to lift the freeze. Qwest has stated it will not engage in marketing or "winback" efforts during either the customer-initiated call or the three-way call to lift the freeze. Qwest asserts that its local service freeze program meets the FCC's requirements for service freeze tariffs.

In response to CLEC criticisms, Qwest testified that it has recently effected changes in its processes in other states where the LSF is already in effect. Qwest has contracted with an independent third party vendor who is handling all LSF removals initiated by customer phone calls. Customers may contact the Qwest business office, and will then be transferred to the third party vendor to remove the freeze. Qwest has informed the CLECs of the toll-free telephone number for the third-party vendor, and CLECs may by-pass the Qwest business office and contact the third-party vendor with the customer on the line to request that the freeze be removed. The CLECs complained that a customer service record may not be updated for 2 to 3 days after a freeze is removed which causes their orders to be rejected. To work around the constraint, Qwest has implemented a process by which the CLECs may obtain an order number during the three-way call with the end-user to remove the freeze. Qwest states that the CLEC may enter the order number on its service order, and Qwest will process that order on the same day as the request to lift the LSF. CLEC orders submitted without the order number will be worked the day following the request for the removal of the LSF.

FCC Rules

In its *Second Report and Order*,[1] the Federal Communications Commission ("FCC") recognized that freezes are appropriate means to offer consumers protection against slamming. The FCC adopted rules to clarify the appropriate use of preferred carrier freezes because it believes that freezes create the potential for unreasonable and anti-competitive behavior that might negatively impact efforts to foster competition in all markets.

Specifically regarding Preferred Carrier Freezes of Local and IntraLATA Services, the FCC found in its *Second Report and Order*:

[1] *Implementation of the Subscriber Carrier selection Changes Provisions of the Telecommunications act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking.

135. We decline the suggestion of a number of commenters that we prohibit incumbent LECs from soliciting or implementing preferred carrier freezes for local exchange or intraLATA services until competition develops in a LEC's service area. In so doing, however, we recognize as several commenters observe, that preferred carrier freezes can have a particularly adverse impact on the development of competition in markets soon to be newly open to competition. These commenters in essence argue that incumbent LECs seek to use preferred carrier freeze programs as a means to inhibit the ability or willingness of customers to switch to the services of new entrants. We share concerns about the use of preferred carrier freeze mechanisms for anticompetitive purposes. We concur with those commenters that assert that, where no or little competition exists, there is no real opportunity for slamming and the benefit to consumers from the availability of freezes is significantly reduced. Aggressive preferred carrier freeze practices under such conditions appear unnecessary and raise the prospect of anticompetitive conduct. We encourage parties to bring to our attention, or to the attention of the appropriate state commissions, instances where it appears that the intended effect of a carrier's freeze program is to shield that carrier's customers from any developing competition.

136. Despite our concerns about the possible anticompetitive aspects of permitting preferred carrier freezes of local exchange and intraLATA toll services in markets where there is little competition for these services, we believe that it is not necessary for the Commission to adopt a nationwide moratorium. Indeed, we remain convinced of the value of preferred carrier freezes as an anti-slamming tool. We do not wish to limit consumer access to this consumer protection device because we believe that promoting consumer confidence is central to the purposes of section 258 of the Act. As with most of the other rules we adopt today, the uniform application of the preferred carrier freeze rules to all carriers and services should heighten consumers' understanding of their rights. We note the strong support of those consumer advocates that state that the Commission should not delay the implementation of preferred carrier freezes. We also expect that our rules governing the solicitation and implementation of preferred carrier freezes, as adopted herein, will reduce customer confusion and thereby reduce the likelihood that LECs will be able to shield their customers from competition.

137. We make clear, however, that states may adopt moratoria on the imposition or solicitation of intrastate preferred carrier freezes if they deem such action appropriate to prevent incumbent LECs from engaging in anticompetition conduct. We note that a number of states have imposed some form of moratorium on the implementation of preferred carrier freezes in their nascent markets for local exchange and intraLATA toll services. We find that states – based on their observation of the incidence of slamming in their regions and the development of competition in relevant markets, and their familiarity with those particular preferred carrier freeze mechanisms employed by LECs in their jurisdictions – may conclude that the negative impact of such freezes on the development of competition in local and intraLATA toll markets

may outweigh the benefit to consumers.

The FCC's rules concerning the steps that carriers must take before changing a customer's telephone service are set forth in 47 C.F.R. § 64.1100 *et seq.*. The FCC's rules for preferred carrier freezes require:

1) express consent of the subscriber;
2) freezes must be offered on a nondiscriminatory basis to all subscribers regardless of the subscriber's carrier selections (47 CFR 1190(b));
3) Preferred carrier freeze procedures must clearly distinguish among telecommunication services and separate authorizations are required for each service (47 CFR 1190(c));
4) In soliciting and imposing the freeze, there must be a clear and neutral explanation of what the freeze is, and the procedures necessary to lift it, as well as an explanation that the subscriber will be unable to make a change in carrier selection unless he or she lifts the freeze (47 CFR 1190(d)), and an explanation of any charges; No local exchange carrier can impose a freeze unless the subscriber's request is confirmed either in writing or electronically or by an independent third-party;
5) Procedures for lifting the freeze must allow for subscribers to authorize the lifting of the freeze either orally, in writing or electronically, and the carrier must offer a mechanism that allows a submitting carrier to conduct a three-way conference call to lift the freeze (47 CFR 1190(e)).

<u>Qwest's Position</u>

Qwest asserts that slamming in local service should be addressed before it becomes a problem in Arizona. Qwest argues that the fact that slamming continues to be a problem in the long-distance market, despite a myriad of FCC and state Commission fines undermines the CLECs' contention that there is no need to protect against slamming in the local services market.

Three states in Qwest's service territory have felt that the potential for local slamming was enough to require all local exchange carriers to offer preferred carrier freezes. In enacting its rules, the Washington Utilities and Transportation Commission found that a preferred carrier freeze is a "valuable tool that consumers can use to protect themselves from carriers that Slam" and "that any tool a consumer can use to protect her or himself should be made available." The Colorado Public Utilities Commission concluded that "consumer protection during a transition phase in the telecommunications market is permissible and appropriate. Such protection will speed the transition to a fully competitive marketplace for telecommunications services." In Utah, the state legislature passed a law which expressly requires LECs to offer preferred carrier freezes to their customers.

Qwest notes that Iowa, Montana, Nebraska and Minnesota have declined to lift their moratoriums on LSFs. Nebraska found that unlike other states where LSFs are in place, Nebraska has no rules in place that apply to all carriers, and "declines to permit carriers on a piecemeal basis to implement local carrier freezes. If local carrier freezes are permitted at all, the Commission finds that such freezes should be made applicable to all carriers with appropriate safeguards founded in rules and regulations." The Minnesota Public Utilities Commission noted that:

> [p]rotections against slamming at the local level are already in place in Minnesota, should it occur: a company that cannot verify that it had authorization to switch a customer is charged a penalty for not having proper verification. . . In the absence of evidence to the contrary, it appears that these protections have been adequate to minimize the danger of local slamming in Minnesota and the need for a LSF option.

Qwest asserts that Arizona has promulgated slamming and cramming rules, which can be easily tailored to enforce LSFs in a competitively neutral manner. Qwest states that LSFs are offered in a majority of states, and Qwest argues the LSF helps to accomplish the public policy goals of consumer choice and the option of protecting oneself against slamming before it occurs.

Qwest argues that the LSF will not act as a barrier to competition. Qwest cites the FCC's conclusion in its *Second Report and Order:* "Our experience, thus far, has demonstrated that preventing unauthorized carrier changes enhances competition by fostering consumer confidence that they control their choice of service providers."[2] Qwest claims it has addressed the CLECs' procedural concerns, as evidenced by its experience in other jurisdictions. Further, Qwest has offered to apply a LSF on a resale basis for any LEC providing service in Arizona.

Qwest asserts that the notice about the local service freeze option that it provides to consumers meets the requirements in the FCC rules governing the solicitation of slamming

[2] *Second Report and Order*, at para.114.

protections. Qwest states it provides:

1) An explanation, in clear and neutral language, of what a preferred carrier freeze is and what services may be subject to a freeze;

2) A description of the specific procedures necessary to lift the preferred carrier freeze; an explanation that these steps are in addition to the FCC's verification rules in Secs. 64.1150 and 64.1160 for changing a subscriber's preferred carrier selections; and an explanation that the subscriber will be unable to make a change in carrier selection unless he or she lifts the freeze; and

3) An explanation of any charges associated with the preferred carrier freeze.

Qwest argues the benefits of consumer choice and protection associated with a local service freeze exceed the procedural concerns expressed by the CLECs. In the states where Qwest provides the LSF option, it claims it has worked continually to improve the process, as evidenced by the Change Management Process and the resultant improvements. In response to concerns that Qwest would engage in retention marketing during a customer's request to lift the freeze, Qwest hired a third-party vendor to handle the transaction. Qwest states it has updated the methods that CLECs use to acquire a customer with a LSF to make the process smoother. Qwest contends that the additional step that customers must incur to lift a freeze is minimal and any resulting inconvenience is outweighed by the consumer protection benefits that the customer has voluntarily chosen to exercise. Qwest argues the normal process for changing local providers is not simple and the additional step of lifting a freeze is not over-whelming.

CLEC Positions

AT&T

AT&T notes that although the FCC identified the consumer benefit of local service freezes, it also noted the possible detrimental effects on competition. To address some of the negative effects, the FCC set minimum standards for implementing preferred carrier freezes, and concluded "that states may adopt moratoria on the imposition of solicitation or intrastate preferred carrier freezes if they deem such action appropriate to prevent incumbent LECs from engaging in anticompetitive conduct."[3]

AT&T argues that the negative impacts on the development of competition outweigh any benefit to consumers, since there is no evidence that slamming in the local exchange market is a problem in Arizona. AT&T asserts that Arizona should not approve the tariff based solely on Qwest's statement that that there is a consumer benefit.

The FCC has said that "where no or little competition exists, there is no real opportunity for slamming and the benefit to consumers from the availability of freezes is significantly reduced." Thus, AT&T argues, the first step in determining whether to approve the LSF tariff is to review the state of competition in Arizona. Qwest states that Staff's recent inquiry in Qwest's Section 271 proceeding indicates that CLECs serve three percent of total residential lines and 15 percent of total business lines, or a total of 7 percent of all access lines in Qwest's territory. AT&T claims this is hardly robust competition, and there is no real opportunity for slamming. Further, Qwest did not provide evidence that slamming of local exchange providers is a problem. Qwest only identified one specific example of local service slamming since January 2001, and admits it is not aware of any actual incidence of local slamming in Arizona. Thus, the lack of any slamming in the local exchange market, makes the LSF unnecessary.

Based on this Commission's decision not to include preferred carrier freezes on local exchange carriers in its pending rules on slamming and cramming, AT&T concludes that the Commission currently does not consider slamming of local exchange service providers to be a problem. According to AT&T, the evidence suggests that consumers do not see slamming as a problem in the local exchange market. Even with aggressive marketing, only four percent of the customers in Washington have implemented a freeze on their local exchange service.

AT&T asserts Qwest's proposed tariff is overly simplistic and lacks essential terms. Moreover, AT&T argues, Qwest's practices of implementing the tariff have a detrimental effect on local competition. AT&T argues the negative impacts on the development of competition outweigh the benefit to consumers.

[3] *Second Report and Order*, at para. 137.

AT&T argues the LSF adds costs to CLECs to acquire customers. It adds an additional step to the process of changing carriers and makes the ordering process more complex and difficult. AT&T describes the process: "[t]he CLEC must convince the customer to switch, allow access to her/his CPNI, identify services she/he currently has and wishes to retain or add, fill out an order form identifying every USOC for every feature, verify through the use of a third-party vendor her/his desire to switch, and finally, identify whether the customer has a carrier freeze and lift the carrier freeze through a 3-way call to Qwest's contractor." AT&T states this assumes the customer is aware of the freeze and that the marketing is not being done on Saturday or Sunday, in which case a follow-up call is necessary. AT&T argues the complexity adds to CLEC costs at a time when competition in the local exchange market, particularly the residential market, is almost nonexistent. AT&T argues the added costs to the CLECs without a corresponding benefit to consumers does not warrant implementing the LSF.

The problems with the freeze that AT&T encounters in Washington demonstrate the anti-competitiveness of the freeze. AT&T testified that it has spent many hours trying to resolve and escalate LSF disputes with Qwest in Washington because Qwest's processes and procedures were inadequate. The LSF business procedures have gone through 11 versions in the last 6 months. AT&T testified that 20 percent of AT&T's new customers declined to complete the process of lifting the freeze. All the marketing costs incurred on these customers were wasted as a direct result of the freeze. AT&T criticizes Qwest for not operating the center that removes freezes on Saturdays or weekends, which means that the three-way call to remove the freeze cannot not occur until a later time. While AT&T recognizes that one might call these the normal costs of doing business, AT&T argues that they are totally avoidable because slamming in the local exchange market is nonexistent.

AT&T believes that Qwest's intent to market the LSF, whether or not the customer called about the LSF service, is anticompetitive. Qwest has an incentive to market the LSF and require a cumbersome process to remove it, as means to secure its base of customers. AT&T states it has spent hours trying to lift freezes, resolving and escalating disputes and trying to fix Qwest's policies and procedures to make the process workable. Not only is it costly to AT&T, the problems continue, and while the process is being fixed or the problems resolved, the customers remain with Qwest.

AT&T criticizes Staff's view that if the tariff is implemented in a competitively neutral manner (interpreted by Staff as being consistent with FCC rules) the benefit to consumers would outweigh the negative impacts on competition. AT&T argues that Staff ignored the FCC's conclusion that states may still impose a moratorium on implementing the freezes if the negative impacts on the development of competition outweigh the consumer benefit. AT&T asserts that Staff has ignored the entire debate by its definition of "negative impacts" and "competitively neutral". Staff did not evaluate the effects of the LSF tariff on the performance of Qwest's OSS, the effects of the LSF tariff on the ability of a CLEC to process a local service request, whether the LSF tariff lengthens the standard service interval, whether the LSF causes manual processing of an order or LSR that would normally flow-through, or the effects on the Performance Indicator Definitions ("PIDs").

Cox

Cox argues that the if the LSF tariff is implemented, its primary impact will be to interfere with the potential flow of customers to Qwest's competitors, not to protect Arizona consumers against a serious problem with local service slamming. Cox asserts that the added step of calling Qwest to remove the freeze is sometimes all it takes to prevent a customer from switching carriers.

Under the FCC's framework, the Commission must balance the anticipated benefits of the tariff against the potential harm caused by the tariff. Cox believes the sole benefit is to prevent local service slamming, and this is simply a non-existent problem in Arizona. There has only been one specific example of local service slamming in Arizona since January 1, 2001. On the other hand, Cox believes the potential harms are substantial, including: (1) frequent marketing of a service by Qwest that implies that Qwest's competitors are engaged in improper business activity; (2) increased difficulty for consumers wishing to move to a competitor of Qwest; and (3) interference with the development of competition, particularly in the residential market. Cox argues the potential harms far outweigh the benefit and dictate against adopting the LSF.

Cox argues that not only is local service slamming not a problem currently, it is not likely to become a problem. The record shows that local service slamming is difficult, if not impossible, to do without Qwest's or the customer's knowledge. A change of local service by full facilities-based providers like Cox requires a company technician to set an appointment to meet the customer and then requires physical modification of the system and wiring at the customer's home.

Cox states the current lack of slamming reflects both (1) the difficulty of local slamming by facilities-based providers and (2) the lack of economic incentive for resale slamming (the available discounts have kept most authorized providers from entering Arizona's residential markets.) In addition, current FCC slamming regulations create a strong financial disincentive for any unscrupulous provider who might be tempted to use such tactics.

Cox states an LSF can have detrimental impacts on competition, particularly when the competitive market is not well developed. Cox argues it would inhibit the movement of customers from Qwest to Qwest's competitors, thus maintaining Qwest's market share and harming the development of competition.

Cox argues that Qwest's attempts to revise procedures indicate that even Qwest is aware of the potential anti-competitive impacts of the proposed LSF tariff, but that its efforts were almost always initiated post hoc at the insistence of the CLECs. Cox states that the changed procedures are simply posted on Qwest's website and are not part of the tariff itself, and thus can be changed at Qwest's whim.

Although Qwest claims that lifting the freeze is only one additional step in the process, Cox argues the record shows that it will add a particularly confusing step to the process when combined with other necessary steps that could include multiple transfers of a customer's call between the CLEC, the third-party verification of change service, Qwest, and the third-party that removes the freeze. Cox notes this confused process is in addition to difficulties related to the lifting of the freeze itself. By forcing customers to call Qwest to lift a freeze, Cox is concerned Qwest may subject them to "retention" scripts or other efforts to keep the customer with Qwest, and inform them of its "Winback" program in an effort to entice the customer to return to Qwest in the future. Cox does not believe that Qwest's proposed procedure to involve a third-party to handle requests to lift a freeze will be effective, because as both the tariff and Qwest's testimony indicate, a customer must first contact Qwest if he or she wants to lift a freeze.

Qwest has indicated that it will use unrelated customer contacts it receives to market the local service freeze to customers. Cox claims those marketing contacts will offer a free freeze service to consumers who do not need it and would otherwise not have requested the service. Over time, Cox argues, the barrage of marketing will create a significant barrier to exit for numerous Qwest customers who may not realize the implications of the freeze if they later choose service from a Qwest competitor. Cox is concerned that nothing in the tariff limits Qwest's marketing, which could include alarmist scripts that scare customers into believing their local phone service is at risk. Further, even if Qwest does not "aggressively" market the LSF, the mere existence of the LSF product implies that Qwest's competitors are engaged in unscrupulous business practices, and may make consumers unduly wary of CLEC marketing.

Cox complains that Qwest's business procedures for lifting a freeze are not available on weekends or evenings when CLECs often will have the most need for them – particularly in the residential market. Some of the operational concerns will remain regardless of particular "business procedures" and warrant rejecting the LSF. Cox believes the problems include: the fact that not every Cox customer service representative has direct access to Qwest's customer's account information to determine if the customer has an LSF; the additional call to the third-party agent to remove the freeze adds to the potential for dropped calls; even with Qwest's eight-digit "record order number," it is still unclear exactly when the freeze will be lifted; it is still unknown how the third-party verifier that does not have direct access to customer information can tell if a customer has a freeze in place or how it will know if a customer is authorized to lift the freeze; and the CLEC does not receive notification that the freeze has been lifted.

Cox argues the FCC explicitly found that state public utility commissions have the ability to adopt moratoria, or other requirements on the imposition or solicitation of intrastate preferred carrier freezes. Cox notes that the Iowa Utilities Board has prohibited Qwest from implementing a local service freeze because of the lack of local service slamming and the small percentage of market share held by CLECS. The Montana Public Service Commission imposed an 18-month moratorium on Qwest's proposed freeze because at the time there is no apparent need for such a freeze and the freeze would have the anti-competitive effect of locking customers to Qwest. The Minnesota Public Utilities Commission rejected Qwest's LSF option on the grounds there is no local service slamming problem in Minnesota, local competition is at a fragile state of development and it would be difficult to assure that in practice the LSF would not be operated in a way more directly burdensome to competition than Qwest acknowledges. The Nebraska Public Service Commission has prohibited Qwest from implementing the LSF because there is a relative lack of local service slamming.

Finally, Cox argues that if the Commission finds the potential benefits offered by a local service freeze outweigh the potential harm to competition, the Commission should approve a form of tariff that protects against the potential anti-competitive effects of such a freeze. Cox claims Qwest's proposed LSF tariff does not begin to offer adequate safeguards. The tariff as proposed provides no information on how to remove the freeze, nor does it provide a time frame within which the freeze will be lifted. Further, Cox is disturbed that Qwest's "business procedures" that implement the tariff are not binding and may be withdrawn or modified at Qwest's discretion. Unlike PIC freezes, Qwest has an unavoidable conflict of interest because almost every change of local service provider involves a customer that is leaving Qwest. Cox does not believe that the Commission should attempt to correct the failings of the tariff at the end of this proceeding because affected parties would not be able to scrutinize them sufficiently. Cox believes that it is more appropriate to consider the matter in a rulemaking so that any local service freeze tariff will not be abused.

WorldCom

WorldCom frames the debate as involving two significant policy issues. First, is it in the public interest, at this time, to permit Qwest to file a tariff offering an LSF option to its customers in Arizona? And second, if Qwest is permitted to file such tariff, is the specific tariff Qwest proposes here in the public interest?

WorldCom testified to the practical problems with sales, telemarketing, installation, and/or internal operating procedures that are anti-competitive forces. These problems in conjunction with the fact there is no problem with local slamming in Arizona weigh against adopting the LSF at this time. WorldCom notes that although some states in Qwest's region have required some version of the LSF, those states may have market conditions that are different than Arizona.

WorldCom states that if Qwest is permitted to offer its LSF service, then the tariff must be revised and improved to implement safeguards in its marketing and implementation. WorldCom recommended that Arizona consider rules to prevent inappropriate policies that will damage local competition. WorldCom further supports Staff's testimony that terms and conditions must be included in the tariff, and specifically, that Qwest should not be allowed to offer the LSF on every incoming call from customers regardless of the reason precipitating the call.

Staff

Staff states that a local service freeze is designed to give customers absolute assurance that their phone service will not be transferred from their carrier of choice to another carrier without their express permission. Staff believes that affording consumers the option of a LSF adds protection and benefits Arizona consumers. Staff believes that the procedure for lifting the freeze that involves the least amount of the consumer's time and effort is also a consumer benefit and is in the public interest. Thus, Staff believes the FCC's requirements should be included as terms and conditions of Qwest's LSF and that solicitation of the freeze should be limited. Staff recommends that bill inserts or other mailings may be used, but must be submitted to the Commission for approval prior to use. Staff further recommended that solicitation of the LSF on inbound calls should be limited to responses to customer concerns where the LSF is the logical solution to the calling customer's concern. Staff recommends that outbound or telemarketing solicitation should not be allowed. Finally, Staff recommends that implementation of the tariff be delayed for a period of six months while the parties address the affects of the freeze on the processes and performance measurements.

Staff states that the CLEC argument that consumers cannot benefit from additional protection against slamming when there is no evidence of slamming in the local market is flawed. Staff argues that whether slamming is a current reality is immaterial to whether the consumer benefits from the confidence gained in providing added protection against the possibility of slamming. In addition, the absence of slamming is likely a result of the nascent state of local competition in Arizona. Staff opines that the incidence of slamming may become more prevalent as competition in the local market increases.

Staff notes that the Washington Commission considered the issue of whether a rule should be passed requiring an LSF and concluded that although slamming was not a problem in that state at that time, it was in the public interest to establish the rule before slamming actually became a problem.

Staff states that in Washington, fewer than 100,000 customers have placed a freeze on their accounts, which Staff believes indicates that 100,000 customers desired additional protection against slamming and second, that a small percentage of Qwest's customers choose the option, which lessens its overall affect on competition. Staff believes that a proactive approach, affording the consumer every opportunity to protect himself before being harmed, is in the public interest.

In response to the suggestion that implementing the freeze option is better done in a rulemaking process, Staff states that it is not practical to amend the currently pending slamming and cramming rules, and that moreover, slamming is most likely to occur on Qwest's network under current conditions. In Staff's opinion, Qwest's tariff is a practical and appropriate method to allow consumers to assure themselves that they will not become the victim of slamming.

Despite its belief that the LSF provides a consumer benefit, Staff believes that the tariff must be implemented in a way that is competitively neutral. Staff believes that a tariff that adopts the requirements set forth in the FCC's *Second Report and Order* and 47 CFR 64.1190 will render a freeze that is not anti-competitive. Specifically, Staff recommends that the tariff should contain a statement that the freeze shall be offered "on a nondiscriminatory basis to all subscribers, regardless of the subscriber's carrier selections." Staff also recommends that the tariff contain limitations on the methods Qwest may use to solicit its customers to apply the freeze. The tariff should include language that any solicitation or other materials regarding the LSF include: "an explanation, in clear and neutral language" of what an LSF is; a detailed description of what procedures will be necessary to lift the LSF; a statement that the implementation of an LSF may slow the consumer's transition from the current carrier to a new carrier should the consumer wish to make that change in the future; a statement that changing carriers will not be possible unless the consumer expressly lifts the freeze; and an explanation of any charges associated with the freeze or a statement that there are no charges associated with the freeze. Staff believes that Qwest should not be able to market the LSF to customers who call to explore calling features such as caller ID, call waiting, etc. Staff believes that information concerning the availability of the LSF on an inbound call should be limited to those calls where a customer specifically presents a problem for which the LSF is a reasonable solution. Staff believes the tariff should include language that limits marketing.

Staff seeks to limit Qwest's ability to heighten subscriber fears about slamming as a means to encourage its subscribers to place a freeze on their accounts. Staff fears that the heightened consumer fears regarding slamming may negatively impact consumer perception of the competitive telecommunications market. Staff agrees with Qwest that marketing scripts are not a practical method of controlling the way the LSF is presented to customers, thus Staff believes that the best way to negate the possible negative effect of the freeze is to prohibit Qwest from telemarketing the freeze. Staff recommends that the tariff contain such prohibition. Staff further believes that any bill inserts or other mailings informing consumers of the availability of the LSF must be submitted to the Commission for approval, and the tariff should contain language requiring such submission.

Staff believes that any potential for confusion about the nature and affect of the freeze must be eliminated. Staff recommends that the tariff should be modified to include a statement that all freeze procedures including solicitation, will make clear that the freeze applies to consumer's local service only and that separate authorization is required for each separate type of service (e.g. intra-state long distance, and inter-state long distance).

Staff believes the LSF must not be placed on a customer's telephone line without the customer's full knowledge of its effects. Thus, Staff recommends the procedures for implementation be well defined and include a requirement that the "subscriber's request to impose a freeze has first been confirmed in accordance with one of three procedures." The procedures, set forth in 47 CFR 64.1190(2), include: 1) obtaining the subscriber's written or electronically signed authorization; 2) electronic authorization from the subscriber placed from the telephone number(s) on which the LSF is to be imposed; and 3) a subscriber's oral authorization obtained by an appropriately qualified independent third party.

Staff believes the tariff must provide that the written authorization is invalid if it fails to meet certain criteria. The authorization must be a separate document or located on a separate screen or web page containing only the authorizing language and having no other purpose but to authorize the initiation of an LSF. The authorization must be signed and dated by the subscriber to the account requesting the LSF. The authorization must not contain any inducement for its execution. If any portion of the authorization is translated into another language then all portions of the authorization must be translated into that language. The written authorization must be in type of sufficient size to be easily readable and its language must be clear and unambiguous. The language of the authorization must confirm the subscriber's billing name and address and the telephone number(s) to be covered by the LSF. It must confirm the decision to place an LSF on a particular number(s). It must confirm that the subscriber understands that he or she will be unable to make a change in carrier selection unless he or she lifts the LSF and that the lifting of the LSF may delay the transition to the new carrier. Finally, it must confirm that the subscriber understands that the freeze may involve a charge to the subscriber or in the alternative that the freeze does not involve a charge to the subscriber.

An electronic authorization must confirm that the person entering the data is the subscriber on the line being frozen and should contain the same information as the written authorization outlined above. If Qwest chooses to confirm LSF orders electronically it must establish one or more toll-free telephone numbers that are used exclusively for that purpose. Calls to that number must automatically record the subscriber's required verification data as well as the originating automatic numbering information.

Under third-party verification, the independent third party must not be owned, managed, or directly controlled by Qwest or Qwest's agent. The independent third party must have no financial incentive to confirm LSF requests for Qwest or Qwest's agent. The independent third party must operate in a location physically separate from Qwest or Qwest's agent. The content of the verification must include clear and conspicuous confirmation that the subscriber has authorized an LSF.

Staff recognizes that procedures for lifting the freeze are the most contentious, as CLECs cannot gain new customers who have existing freezes until the freeze is lifted. Staff believes that if the provisions it recommends for establishing the freeze are implemented, then the customer will be well-informed of the effect of the tariff and the potential negative impact on competition will be minimized. Staff believes that the change management process ("CMP") is the proper forum for addressing the time and effort needed to lift the freeze. Staff believes the CMP has been effective in Washington where AT&T initiated discussion and effected changes to the procedures for lifting the freeze. However, Staff also believes there should be discussion of how to implement the service freeze prior to its implementation, and that the Commission should condition approval of the freeze upon Qwest entering into good faith discussions concerning the freeze's affects on processes. Such discussion should include, but not be limited to, the affect of the tariff on the flow-through processing of an LSR; on the issuance of Firm Order Confirmation, on the calculation of the Performance Indicator Definitions; the affect on the standard service interval, the timing of the update to the repository and the customer service record to show the customer has lifted a freeze; the ability of the third party verifier to determine if a customer has a freeze; the timing of notification to a customer or CLEC of the existence of a freeze when an LSF is presented on an account with a freeze and the freeze has not been lifted; and the timing of the notice to a customer attempting to lift a freeze when the attempt has been rejected because it contains an error.

Staff recommends the tariff contain the following procedural options for lifting an LSF. First, the tariff must provide for an absolute ban on retention efforts by Qwest or Qwest's agents when a subscriber calls to lift a freeze. The subscriber's written or electronically signed authorization and the oral authorization of the subscriber stating the subscriber's intent to lift an LSF must be accepted. The tariff must provide that Qwest will offer a mechanism allowing a submitting carrier to conduct a three-way conference call with the carrier administering the freeze and the subscriber in order to lift the freeze. Qwest must ensure that the appropriate verification data and subscriber's intent to lift the LSF are confirmed.

<u>Discussion and Decision</u>

The parties all cite to the FCC's *Second Report and Order* as support for their positions. It is clear from the *Second Report and Order* that the FCC found that preferred carrier freezes can be an effective consumer tool against slamming. The FCC also recognized that such freezes can have anticompetitive effects and it adopted rules that it believed would limit the anticompetitive affect of the freezes. Importantly, the FCC recognized that the states have the power to order moratoria on the implementation or solicitation of local service freezes as the states are in the best position to determine if the anticompetitive concerns surrounding a local service freeze outweigh the benefits of such freeze.

There is no evidence in the record that slamming in the local exchange market is a problem in Arizona. The only reason to implement such a tariff at this time is to assuage consumer fears that they may encounter local service slamming. As competition increases in the state, there may be more opportunity for slamming in the local market, however, because of the mechanics of changing a local service provider, it appears unlikely that local exchange slamming will be as great a problem as slamming in the long distance market. If the existence of a local service freeze increases consumer confidence in the telecommunications industry, it may encourage competition.

The only party that we haven't heard from in this matter is the public. No consumer groups intervened in this matter. The states in Qwest's region that have considered the issue are split on whether to permit local service freezes. Some have concluded that offering the consumer a tool now before local service slamming is a problem is a way to prevent the problem. Others have determined that the anticompetitive affects of a freeze are too great given the nascent state of competition in their states. The Washington Commission instituted rules that require all carriers to make the freeze available. Only a small percentage of customers have availed themselves of the option, which may show the public does not consider local service slamming to be a threat. On the other hand, since only a small numbers of consumers have opted for the freeze, it may not have a significant effect on competition.

Washington's rules are similar to those enacted by the FCC, but include some additional provisions, such as a requirement that the "executing carrier must comply with a requested change promptly, without any unreasonable delay" and a two-year retention of authorization documentation. The Washington rules require all local exchange carriers to notify their customers of the availability of the freeze no later than the customer's first phone bill and once per year thereafter.

Slamming in the long distance market has been a problem for years and we know the public is concerned. In addition, there may be reasons a consumer may want to install a freeze on his or her local carrier other than fear of slamming. A consumer may decide that such a decision should be a considered one and want to protect him or herself from aggressive marketing, or may want to be assured that only authorized persons within the household can make such a change.

Commission Staff believes that if the freeze is offered and marketed in a nondiscriminatory manner and in conformance with FCC rules for preferred carrier freezes it won't have anti-competitive affects. Staff believes, however, that the tariff must explicitly contain certain procedures and safeguards and should not be implemented until the parties have been able to work out procedures to ensure that lifting the tariff is as smooth as possible.

After weighing the evidence and careful consideration of the arguments for and against the proposed LSF, we find that implementing a form of the LSF has a legitimate benefit as a consumer protection tool. We believe that the best way to implement this consumer protection tool is through rulemaking, so that all carriers can offer the product and be governed by the some requirements. We Direct Staff to open a rulemaking docket for this purpose.

In the interim, we find no reason to preclude Qwest from offering an LSF tariff, however, we find Qwest's current LSF tariff to be insufficient and deny approval. We will allow Qwest to re-file a LSF tariff that complies with Staff's recommendations set forth herein. If Qwest decides to re-file a LSF tariff, it should mail copies of its filing to the intervenors in this case. We further expect that in such event, Qwest should work with Staff and the interested parties in developing procedures that will result in the smooth operation of the freeze. Discussions should address how the LSF will affect Qwest's OSS, and the processing of a local service request; how long it will take to lift a freeze and how customers and the CLECs will receive notice that the freeze is lifted or there is a problem; a records retention policy; and other operational concerns as may arise.

* * * * * * * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. On January 28, 2002, Qwest filed tariff revisions to give its customers the option of instituting a freeze of their local exchange provider.

2. On January 31, 2002, Cox filed a Motion for Suspension and for Hearing. Cox requested that the Commission conduct an evidentiary hearing to fully examine the propriety of the local service freeze and to determine if the tariff should be approved.

3. On February 4, 2002, WorldCom and TWTA filed separate Joinders in Cox's Motion.

4. On February 26, 2002, the Commission suspended the tariff until May 27, 2002. The Commissioners directed the matter to the Hearing Division.

5. The Commission granted intervention to Cox, WorldCom and TWTA on February 20, 2002 and to TCG Phoenix on March 11, 2002.

6. By Procedural Order dated March 25, 2002, the matter was set for hearing on June 17, 2002.

7. On May 26, 2002, the Commission issued Decision No. 64831, which suspended the matter until November 23, 2002.

8. A hearing convened on June 17, 2002, at the Commission's offices in Tucson, Arizona. Scott A. McIntyre testified for Qwest; Dawn Russell testified for AT&T; Mindy J. Chapman testified for Worldcom; Douglas Garrett testified for Cox; and Wilfred M. Shand testified for Staff.

9. Qwest argues that slamming in local service should be addressed before it becomes a problem in Arizona and asserts that its proposed tariff and procedures for implementation comply with the FCC rules that address preferred carrier freezes.

10. CLECs argue that because slamming in the local exchange market is not a problem and is not likely to become a problem, the anti-competitive effects of the LSF outweigh the potential consumer protection benefits. They also argue that the particular proposed tariff does not contain sufficient detail and allows Qwest to unilaterally change implementation procedures that may negatively impact the willingness and ability of consumers to change their local service provider.

11. Staff believes that affording consumers the option of a LSF adds protection that benefits Arizona consumers. Staff believes that the procedure for lifting the freeze that involves the least amount of the consumer's time and effort is also a consumer benefit and is in the public interest. Thus, Staff believes the FCC's requirements should be included as terms and conditions of Qwest's LSF and that solicitation of the freeze should be limited. Staff recommends that bill inserts or other mailings may be used, but must be submitted to the Commission for approval prior to use. Staff further recommends that providing information about the LSF on inbound calls should be limited to responses to customer concerns where the LSF is the logical solution to the calling customer's

concern. Staff recommends that outbound or telemarketing solicitation should not be allowed. Finally, Staff recommends that implementation of the tariff be delayed for a period of six months while the parties address the affects of the freeze on the processes and performance measurements.

12. In its *Second Report and Order*, the FCC recognizes that freezes are appropriate means to offer consumers protection against slamming, but they create a potential for unreasonable and anti-competitive behavior that might negatively impact efforts to foster competition. The FCC acknowledges that state commissions have the authority to adopt moratoria on the imposition or solicitation of intrastate preferred carrier freezes if such action is appropriate to prevent LECS from engaging in anticompetitive behavior.

13. Slamming in the local exchange market is not a problem in Arizona.

14. Competition in the local exchange market in Arizona is in the early stages of development.

15. The benefits of an LSF will outweigh the potential harm to competition if consumers are well informed about the LSF and procedures for lifting the freeze allow the transition to a new carrier as easily as practicable while still preserving the purpose of the freeze.

16. The consumer protection afforded by a local service freeze is best addressed in a rulemaking proceeding.

17. Qwest's proposed LSF tariff does not provide specific information on how a consumer can impose or lift a tariff, nor does it address how the service will be marketed.

18. Staff's recommendations to revise the tariff are reasonable and should be adopted.

CONCLUSIONS OF LAW

1. Qwest is a public service corporation within the meaning of the Arizona Constitution, Article XV, and under Arizona Revised Statutes, Title 40, generally.

2. The Commission has jurisdiction over Qwest and the subject matter of this proceeding.

3. Notice of the application and subsequent proceeding was provided in the manner prescribed by law.

4. Qwest's proposed LSF does not provide sufficient detail on its implementation and is not in the public interest.

ORDER

IT IS THEREFORE ORDERED that Qwest Corporation's request to approve its proposed LSF tariff is denied.

IT IS FURTHER ORDERED that Staff shall open a rulemaking docket to consider implementing a local service freeze.

IT IS FURTHER ORDERED that pending adoption of rules, Qwest Corporation may re-file a LSF tariff application that complies with Staff's recommendations set forth herein and shall mail copies of any such filing to all intervenors in this matter.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 1st day of November, 2002.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT ________________

JR:mlj

Decision No. 65349

SERVICE LIST FOR: QWEST CORPORATION – APPROVAL OF LOCAL SERVICE FREEZE TARIFF.

DOCKET NO. DOCKET NO. T-01051B-02-0073

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